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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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SOMPO JAPAN INSURANCE COMPANY OF :  
 AMERICA, and SOMPO JAPAN INSURANCE, :  
 INC., :

**07 Civ. 11276 (DC)**

*Plaintiffs,* :  
 - against - :

YANG MING MARINE TRANSPORT :  
 CORPORATION, :

**PLAINTIFFS' STATEMENT  
 OF UNDISPUTED MATERIAL  
 FACTS PURSUANT TO  
LOCAL RULE 56.1**

*Defendant.*

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Plaintiffs submit this Statement of Undisputed Material Facts pursuant to Local Rule 56.1 in support of their Motion for Partial Summary Judgment that Defendant is liable without limitation.

**Kubota Tractor Shipment**

1. On or about March 31, 2006, Yang Ming Marine Transport Corporation ("Yang Ming") issued the following Waybills for the carriage of Kubota New Agricultural Tractors shipped by Kubota Corporation from Tokyo aboard the M/V Cherokee Bridge to the Port of Long Beach, California, and from there to Jefferson, Georgia:

	Billing of Lading Number	Container Number
1	YMLUW251121404	YMLU8294100

2	YMLUW261121400	FSCU6904489
3	YMLUW251121405	CLHU8586100
4	YMLUW251121387	XINU8033402
5	YMLUW251121388	YMLU8217892
6	YMLUW251121389	YMLU8264472
7	YMLUW251121386	CRXU9841070
8	YMLUW251121382	YMLU8190019
9	YMLUW251121402	TGHU8035818
10	YMLUW251121384	YMLU8131839
11	YMLUW251121380	CRXU9505408
12	YMLUW251121398	INKU6363983
13	YMLUW251121381	BHCU4940820
14	YMLUW251121383	CRXU9829536
15	YMLUW251121385	TRLU8116442
16	YMLUW251121378	YMLU8223405

(Declaration of Todd A. Barton, Exh. 1).

**Unisia Shipment**

2. On or about March 31, 2006, Yang Ming issued Waybill YMLUW261105356 for the carriage of these 7570 cartons of automotive component parts in four containers (including containers YMLU4455172 and TEXU7204601) shipped by Hitachi, Ltd. from Tokyo aboard the M/V Cherokee Bridge to the port of Long Beach, California and from there to be carried and delivered to Georgia. (Barton Decl., Exh. 2).

**Hoshizaki Electric Shipment**

3. On or about April 11, 2006, Yang Ming issued Waybill YMLUW251752204 for the carriage of 495 cartons of Ice makers and Sushi Cases in container YMLU4515760 from Kobe, Japan (place of receipt) aboard the M/V Cherokee Bridge to the port of Long Beach, California and from there to be delivered to Georgia. (Barton Decl., Exh. 3).

**Derailment**

4. Following discharge of the Cargo in Long Beach, California, the Cargo was placed on the train cars for carriage inland. (Barton Decl., Exh. 8, ¶¶ 6, 12 & 17).

5. On or about April 18, 2006 in Texas, a train operated by and/or controlled by Norfolk Southern Railway Company and/or The Kansas City Railway Company carrying the Cargo derailed. (Barton Decl., Exh. 7).

6. The Cargo was damaged as a result of the derailment. (Barton Decl., Exhs. 7 & 8).

**Yang Ming Bill of Lading Terms**

7. Clause 7(B)(2) of the Yang Ming bill of lading standard terms provides, in pertinent part:

Notwithstanding the foregoing, in the event there is a private contract of Carriage between the Carrier and any Underlying Carrier, such Multimodal Transportation will [be] governed by the terms and conditions of said contract which shall be incorporated herein as if set forth at length and copies of such contract(s) shall be available to the Merchant at any office of the Carrier upon request.

(Barton Decl., Exh. 4, ¶ 7(2)(B)).

**Intermodal Transportation Agreement with Norfolk Southern Railway Company**

8. On August 12, 2004, Defendant Yang Ming and Norfolk Southern Railway Company entered into an “Intermodal Transportation Agreement,” which was effective at the time of the train derailment in this case. (Barton Decl., Exh. 5).

9. Clause 12.B(1) of said “Intermodal Transportation Agreement” provides, in pertinent part:

[Norfolk Southern] will be liable for and will hold [Yang Ming] harmless against loss of or damage to freight in containers transported at the rates and charges provided in this Agreement and Exhibit 1 **only to the extent that the sole proximate cause of said loss or damage is a railroad accident, derailment, or collision between railroad equipment negligently caused by [Norfolk Southern].**

(Barton Decl., Exh. 5, ¶ 12.B(1)).

Dated: Rye, New York  
February 22, 2008

MALOOF BROWNE & EAGAN LLC

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